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Los Angeles Superior Court

OCT 10 2006

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 14 VARIOUS PARTIES

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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## IN AND FOR THE COUNTY OF LOS ANGELES

14 BRUCE SCHILLER, an individual and on  
 15 Behalf of all Others Similarly Situated,

Plaintiffs,

vs.

18 PLANTRONICS INC., a Delaware  
 19 corporation, and DOES 1-50,

Defendants.

CASE NO. 6C360076CLASS ACTIONCOMPLAINT FOR:

1) VIOLATION OF CONSUMERS  
 2) LEGAL REMEDIES ACT,  
 (CAL. CIV. CODE § 1750 et seq.);

2) VIOLATION OF UNFAIR  
 COMPETITION LAW,  
 (CAL. B & P CODE § 17200 et seq.);

3) UNTRUE AND MISLEADING  
 ADVERTISING  
 (CAL. B & P CODE § 17500, et seq.)

4) UNJUST ENRICHMENT

5) BREACH OF EXPRESS  
 WARRANTY

6) BREACH OF IMPLIED  
 WARRANTY

JURY TRIAL DEMANDED

28

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1 Plaintiff BRUCE SCHILLER ("Plaintiff"), individually and on behalf of others  
2 similarly situated, brings this action against Defendant PLANTRONICS INC. and DOES 1  
3 through 50 (jointly "Defendants"), demanding a trial by jury, as follows:

4

5 VENUE

6

7 1. Venue is proper in this Court pursuant to California Code of Civil Procedure  
8 § 395(b), in that this action arises from an offer or provision of goods intended primarily  
9 for personal use. Plaintiff resided in the County of Los Angeles at the time that the  
10 purchases of the goods at issue were made, and continues to live in the County of Los  
11 Angeles at the present time. Plaintiff purchased the goods at issue in the County of Los  
12 Angeles. At all relevant times, Defendants marketed and sold Bluetooth headset devices to  
13 purchasers in California, including but not limited to, in the County of Los Angeles.

14

15 2. This Court has subject matter jurisdiction over this Class and the  
16 representative action pursuant to Bus. & Prof. Code § 17200, et seq. ("UCL"); Bus. &  
17 Prof. Code § 17500, et seq.; Civ. Code § 1750, et seq.; Code of Civil Procedure § 382, and  
18 other provisions of the California Codes.

19

20 THE PARTIES

21

22 3. Individual and representative plaintiff Bruce Schiller is a resident of the  
23 County of Los Angeles, State of California.

24

25 4. Plaintiffs are informed and believe and on that basis allege that Defendant  
26 Plantronics Inc. ("Plantronics") is a Delaware corporation, with its principal place of  
27 business in California, registered to do business, and doing business, in the state of  
28 California.

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1       5. Plantronics is authorized to do business in California, has sufficient  
2 minimum contacts with California, and/or otherwise intentionally avails itself of the  
3 markets in California through the promotion, marketing and sale of its products in  
4 California, to render the exercise of jurisdiction by this Court permissible under traditional  
5 notions of fair play and substantial justice.

6

7       6. The true names and capacities, whether individual, corporate, associate or  
8 otherwise of defendants DOES 1 through 50, inclusive, and each of their roles in this case,  
9 are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names  
10 pursuant to Code of Civil Procedure § 474. Plaintiffs further allege that each of said  
11 fictitiously named defendants is in some manner responsible for the acts and occurrences  
12 set forth herein. Plaintiffs will amend this Complaint to show their true names and  
13 capacities when the same is ascertained, as well as the manner in which each fictitiously  
14 named defendant is responsible.

15

16       7. Plaintiffs are informed and believe, and thereon allege that at all times  
17 mentioned, that Defendants are each the partners, joint venturers, alter egos, and/or co-  
18 conspirators of each other. At all times mentioned, there existed such a unity of interest in  
19 ownership and interests between each of the Defendants that any separateness ceased to  
20 exist between them. The exercise of complete dominance and control over the other  
21 entities and their properties, rights and interests, rendered such entities as mere shells and  
22 instrumentalities of each other Defendant.

23

24       FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

25

26       8. This action arises from Defendants' marketing, manufacture, and distribution  
27 of devices known as "Bluetooth Headsets" which permit wearers to utilize a mobile phone  
28 without holding the phone next to the face and without the necessity of wires connecting

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1 the phone to the headset.

2

3 9. Plantronics has manufactured and distributed many different models of  
4 Bluetooth Headsets, including the Discovery 655, Discovery 645, Discovery 640,  
5 Discovery 640E, Voyager 510, Explorer 350, Explorer 340, and Explorer 330  
6 (collectively the "Headsets"). On the packaging of these Headsets, Plantronics has made  
7 false representations, omissions and concealments to purchasing consumers in order to  
8 induce the consumers to purchase the product. Each Headset is sold with affirmative  
9 representations that it can be used for extensive time periods, yet the packaging lacks any  
10 warnings regarding the noise induced hearing loss, a condition which has no cure or  
11 treatment, which can be expected to result from use of the Headsets in most environments  
12 over that period of time.

13

14 10. Use of Bluetooth headsets is becoming increasingly popular among the  
15 consuming public because of the ease and convenience associated with the technology.  
16 According to the Insight Research Corporation ("IRC"), "[n]early 65 percent of  
17 Americans, or 195 million people, are expected to be mobile phone subscribers by the  
18 close of 2005." IRC has also reported that "[a]s users become more used to the  
19 convenience of cellular, long distance and local usage is shifting from wireline to cellular.  
20 The average wireline residential toll minutes of use (MOUs) have been dropping at a  
21 compounded rate of 15 percent since 2000, while wireless interstate MOUs per user grew  
22 at a compounded rate of nearly 40 percent during the same period. According to one FCC  
23 study, on the wireless side, the percentage of interstate residential minutes has increased  
24 from 16 percent to 26 percent of all wireless minutes." As more and more people switch  
25 from using landlines to using mobile phones in order to accommodate their  
26 telecommunication needs, more and more consumers are spending hours per day on the  
27 mobile phone. Such increased usage is particularly dramatic with respect to individuals  
28 using a mobile phone for business purposes.

1 11. As explained by the National Institute on Deafness and Other  
2 Communication Disorders (NIDOD) ([www.nidcd.nih.gov/health/hearing/noise.asp](http://www.nidcd.nih.gov/health/hearing/noise.asp)),  
3 "[h]earing is a series of events in which the ear converts sound waves into electrical signals  
4 that are sent to the brain and interpreted as sound. The ear has three main parts: the outer,  
5 middle, and inner ear. Sound waves enter through the outer ear and reach the middle ear  
6 where they cause the eardrum to vibrate." Noise induced hearing loss "can be caused by  
7 repeated exposure to sounds at various loudness levels over an extended period of time."

8

9 12. "The vibrations are transmitted through three tiny bones in the middle ear,  
10 called the ossicles. These three bones are named the malleus, incus, and stapes (and are  
11 also known as the hammer, anvil, and stirrup). The eardrum and ossicles amplify the  
12 vibrations and carry them to the inner ear. The stirrup transmits the amplified vibrations  
13 through the oval window and into the fluid that fills the inner ear. The vibrations move  
14 through fluid in the snail-shaped hearing part of the inner ear (cochlea) that contains the  
15 hair cells. The fluid in the cochlea moves the top portion of the hair cells, called the hair  
16 bundle, which initiates the changes that lead to the production of nerve impulses. These  
17 nerve impulses are carried to the brain, where they are interpreted as sound. Different  
18 sounds move the hair bundles in different ways, thus allowing the brain to distinguish one  
19 sound from another, such as vowels from consonants."

20

21 13. Plaintiff is informed and believes that noise induced hearing loss is the slow  
22 loss of hearing caused by too much noise. Hearing loss happens when too much noise  
23 hurts the hair cells in the inner ear. Noise induced hearing loss is one of the most common  
24 causes of nerve deafness. Noise induced hearing loss lasts forever. There is no treatment,  
25 no medicine, no surgery, and no device which can correct hearing once damaged by noise.

26

27 14. Plaintiff is informed and believes that noise induced hearing loss can happen  
28 gradually over time and does not cause pain. As such, one is not aware that noise induced

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1 hearing loss is occurring until it is too late. Because noise induced hearing loss is an  
2 insidiously developing hearing impairment, damage occurs prior to the point at which it is  
3 perceived.

4  
5 15. Noise induced hearing loss can also result because an individual has become  
6 accustomed to a particular sound level. As the individual gradually suffers hearing loss, in  
7 an effort to compensate for the decrease in ability to hear, the individual unwittingly  
8 increases the volume of a device in order to hear the sound produced and thereby  
9 compounds the injury.

10  
11 16. Another organization, Dangerous Decibels, a public health partnership for  
12 the prevention of noise induced hearing loss, advises the public that "[a] dangerous sound  
13 is anything that is 85 dB (sound pressure level - SPL) or higher." The organization further  
14 explains that "[o]f the roughly 40 million Americans suffering from hearing loss, 10  
15 million can be attributed to noise-induced hearing loss (NIHL). NIHL can be caused by a  
16 one-time exposure to loud sound as well as by repeated exposure to sounds at various  
17 loudness levels over an extended period of time."

18  
19 17. Exposure to a time weighted average decibel level by itself can cause harm.  
20 One knowledgeable organization, the National Institute for Occupational Safety and  
21 Health (NIOSH), has offered the view that exposure to sound averaging at 85 decibels for  
22 more than 8 hours a day by itself presents a risk of hearing loss. According to NIOSH,  
23 each three decibel volume increase reduces the safe exposure time by half, which reflects  
24 the logarithmic nature of the decibel scale. For example, if a Headset set on the higher  
25 volume level produces decibel levels of 91 decibels, noise induced hearing loss statistically  
26 develops if the Headset is used for more than two hours a day. At 94 decibels, noise  
27 induced hearing loss statistically develops if the Headset is used for more than one hour a  
28 day. At 102 decibels, irreversible damage statistically develops if the Headset is used for

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1 more than 7 1/2 minutes per day.

2

3 18. Plantronics' Headsets have volume controls which produce sounds exceeding  
4 85 decibels, with sound often peaking in excess of 100 decibels. According to the  
5 standards promulgated by such organizations as NIOSH and Dangerous Decibels, a  
6 consumer statistically develops NIHL if exposed to such sounds for less than 15 minutes a  
7 day. Further, the consumer cannot determine, without resorting to scientific testing, the  
8 decibel level of the sound being emitted from the Headset.

9

10 19. The packaging on the Headsets advises that the Headsets can be used for  
11 "extended talk time." The various models indicate talk time of 3 hours, 6 hours, 8 hours, 9  
12 hours, 10 hours, and even 15 hours. However, the representations as to permissible talk  
13 times are false, as a consumer cannot safely use the Headsets for the talk times  
14 represented. Plaintiffs and the Class members relied upon these representations made by  
15 Defendants in determining whether to purchase the Headsets at the high price charged for  
16 the devices.

17

18 20. Millions of consumers have had their hearing put at risk by Plantronics'  
19 conduct. Plaintiff and the class members detrimentally relied upon the affirmative  
20 misrepresentations, omissions and concealments made by Defendants regarding the  
21 permissible use of the product. Plaintiff and the class members further relied upon  
22 Defendants' skill and judgment to furnish suitable goods which would not cause harm to  
23 the consumer, and to warn the consumer of any information known by Defendants, or  
24 which should reasonably have been known by Defendants, relating to the safe operation of  
25 the product.

26

27 21. Defendants sold the Headsets with a booklet setting forth "important safety  
28 and operational information" relating to use of the Headsets. However, Defendants

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1 omitted and concealed from consumers any safety information pertaining to the Headsets' 2 propensity for causing noise induced hearing loss. Defendants also omitted and concealed 3 from the consuming public information advising that the Headsets produced noise at 4 decibel levels exceeding 85 db, and even exceeding 100 db.

5

6 22. The same misrepresentations, omissions and concealments were made in the 7 product packaging to each consumer who purchased the product. Plaintiff and the class 8 members relied upon the misrepresentations, omissions and concealments in purchasing 9 the Headsets.

10

11 23. Because the Headset transmits sound to only one ear, extraneous sound from 12 the environment is simultaneously being heard by the Headset user from the other ear. 13 Such ambient sound makes it more difficult for the Headset user to isolate and hear the 14 sound being transmitted over the Headset. The Headset user is thus required to maximize 15 the volume of the Headset in order to overcome the extraneous noise being heard in the 16 other ear.

17

18 24. Plaintiff purchased and used a Headset manufactured and distributed by 19 Defendants. Plaintiff was not aware that the Headset was emitting sounds in excess of safe 20 decibel levels which thereby required the time the product could safely be used to be 21 greatly minimized. Plaintiff would not have purchased the Headset, including at the price 22 charged, if Defendants had disclosed the truth.

23

24 25. The design, manufacture, distribution and sale by Defendants of the Headsets 25 without adequate warning labels that the Headsets produce decibel levels harmful to the 26 human ear constitutes deceptive and unlawful business practices. As a result of 27 Defendants' conduct, numerous consumers have paid for an unsafe product which they 28 falsely were led to believe could be safely used for extended periods of time.

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1       26. Despite the information provided by Plantronics in its "safety booklet,"  
2 Plantronics fails to divulge the decibel output of the device and the potential for noise  
3 induced hearing loss if the Headset is used at a loud setting for more than a safe number of  
4 hours per day. The exclusion of such information from the safety information in the  
5 booklet wrongly implies that the Headset is safe at its maximum volume for the hours of  
6 talk time permitted by the Headset. The safety book falsely represents to consumers that  
7 the "important" information provided in the booklet permits the "safe and efficient  
8 operation" of the Headset. This representation is false, as important safety information has  
9 been excluded from the booklet. Plaintiffs and the Class members relied upon such  
10 misrepresentations, omissions and concealments to their detriment.

11  
12       27. Plantronics affirmatively represented that the Headsets are warranted to be  
13 free from "defects in materials and workmanship." This representation was and is false.  
14 The Headsets are defective and cannot safely be used for their intended purpose. The  
15 materials and workmanship of the product cause the product to produce unsafe decibel  
16 levels under normal consumer usage.

17  
18       28. Plaintiff is informed and believes that the Headsets can be used to listen to  
19 music or television downloaded onto mobile phones. Because of these new uses for the  
20 mobile phone, the time over which the Headsets are used is increased significantly. The  
21 decibel levels of the music or television also exceeds 85 decibel levels, and may even  
22 reach levels capable of producing hearing loss from a single exposure to the loud sound  
23 emitted.

24  
25       29. Other manufacturers of music listening devices, such as Apple with respect  
26 to its iPod, include a warning so that consumers are aware of the potential for hearing  
27 damage. For example, the iPod is sold with the following warning:

28

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## Avoid Hearing Damage

Warning: Permanent hearing loss may occur if earphones or headphones are used at high volume. You can adapt over time to a higher volume of sound, which may sound normal but can be damaging to your hearing. Set your iPod's volume to a safe level before that happens. If you experience ringing in your ears, reduce the volume or discontinue use of your iPod.

The Headsets manufactured, distributed and sold by Defendants, which contain no such warnings, thus fail to follow industry standards for music listening devices.

30. Plaintiff seeks, on behalf of himself and the Class as defined below, injunctive relief, product repair, restitution, damages, and all other appropriate relief. Defendants misrepresented the time period over which consumers could safely use the Headsets. In marketing and advertising the Headsets, Defendants also concealed and omitted material information as to the capacity for the Headsets to cause hearing loss. Plaintiff and the Class members thus: (1) cannot safely use the Headsets for the length of time for which the Headsets were advertised as usable; or (2) must turn the volume of the Headsets so low as to render the Headsets unusable in most environments, thereby drastically limiting and/or eliminating the usability of the product. Had Plaintiff and the Class they seek to represent known the true facts, they would not have purchased them or would have purchased them only at a lesser price. Plaintiff, and the Class Members, thus lost money as a result of the misrepresentations, omissions and concealments by Defendants. In doing the acts herein alleged and purposefully risking the health and safety of millions of consumers in order to increase sales and profits, Defendants, and each of them, acted with oppression, fraud or malice, and Plaintiff and the Class members are entitled to punitive damages.

## **CLASS ACTION ALLEGATIONS**

31. Plaintiff brings this action both on behalf of himself, and as a class action

1 on behalf of the following Class (the "Class"):

2  
3 All consumers who, within the four years prior to the filing of  
4 this Complaint ("Class Period"), purchased a Bluetooth  
5 Headset device manufactured by Defendant and who resided in  
6 California.

7  
8 Said definition may be further defined by additional pleadings, evidentiary hearings, a  
9 class certification hearing, and order of this Court.

10  
11 32. Although Plaintiff does not know the exact number of the members of the  
12 Class, since such information is within the exclusive control of Defendants, Plaintiff  
13 believes that due to the nature of the commerce involved, the number of members of the  
14 Class are sufficiently numerous, most likely thousands of purchasers, that joinder of all  
15 Class members is impracticable.

16  
17 33. The claims of Plaintiff are typical of the Class claims. Plaintiff purchased a  
18 Headset manufactured by Plantronics within the Class Period. The unsafe Headset was  
19 unfairly and falsely marketed by Defendants, with the same misrepresentations, omissions  
20 and concealments made as to Plaintiff and the Class members. All Class members  
21 purchased the Product within the Class Period.

22  
23 34. Numerous questions of law and fact are common to the Class, which  
24 predominate over any individual issues. Questions of law and fact which are common to  
25 the Class include, without limitation:

26  
27 a. Whether Defendants represented to consumers that the  
28 Headsets had a characteristic, use, benefit or quality that

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1 public constitutes an illegal nuisance.  
2

3 35. Defendants engaged in a common course of conduct involving similar or  
4 identical unsafe designs, statutory violations, and misrepresentations. Individual  
5 questions, if any, pale by comparison to the numerous questions that dominate this  
6 litigation. The claims at issue herein do not seek damages for physical injury which has  
7 already occurred to the Class members, and thus individualized determination as to  
8 causation related to bodily injury already suffered will not be required. The monetary  
9 damages sustained by the Class members arise from a common nucleus of operative facts  
10 involving the Defendants' misconduct.

11  
12 36. Plaintiff will fairly and adequately represent the interests of the Class in that  
13 Plaintiff, a California resident, is a typical purchaser of the Headsets. Plaintiff's interests  
14 do not conflict with the interests of the other Class members that he seeks to represent.  
15 Furthermore, Plaintiff has retained competent counsel experienced in class action  
16 litigation. Plaintiff's counsel will fairly and adequately protect the interests of the Class.  
17

18 37. This class action is superior to the alternatives, if any, for the fair and  
19 efficient adjudication of this controversy. The Class is readily definable. A class action  
20 will enable claims to be handled in an orderly and expeditious manner. A class action will  
21 save time and expense and will ensure uniformity of decisions.  
22

23 38. The relief sought per individual member of the Class is small given the  
24 burden and expense of individual prosecution of the potentially extensive litigation  
25 necessitated by the conduct of Defendants. Furthermore, it would be virtually impossible  
26 for the Class members to seek redress on an individual basis. Even if the Class members  
27 themselves could afford such individual litigation, the court system could not.  
28

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1       39. The Class members have been monetarily damaged and suffered injury in  
2 fact as a result of Defendants' misconduct in that each member purchased an unsafe  
3 Headset which the member would not have purchased if the true facts as to the product's  
4 safety and limitations had been revealed by Defendants. The Class members would not  
5 have purchased the Headsets and/or paid as much had they known the truth about the  
6 product.

7  
8       40. Individual litigation of the legal and factual issues raised by the conduct of  
9 Defendants would increase delay and expense to all parties and to the court system. The  
10 class action device presents far fewer management difficulties and provides the benefits of  
11 a single, uniform adjudication, economies of scale and comprehensive supervision by a  
12 single court. Given the similar nature of the Class members' claims and the law applicable  
13 thereto, the Court and the parties will easily be able to manage a class action.

14  
15       41. Prosecution of separate actions by individual Class members would create  
16 the risk of inconsistent or varying adjudications, establishing incompatible standards of  
17 conduct for the Defendants.

18  
19       42. Injunctive relief is appropriate as to the Class as a whole because Defendants  
20 have acted or refused to act on grounds generally applicable to the Class.

21  
22       CALIFORNIA C.C.P. § 382 COMMON OR GENERAL INTEREST  
23       ALLEGATIONS  
24

25       43. In addition to asserting class action claims in this action, Plaintiff asserts  
26 claims on behalf of the common or general interest and sue for the benefit of all because  
27 the parties are numerous, and it is impracticable to bring them all before the court.  
28 Plaintiff seeks to require Defendants to disgorge and restore all monies wrongfully

1 obtained. A common or general interest action is necessary and appropriate because  
2 Defendants have engaged and continue to engage in the wrongful acts described herein as  
3 a general business practice.

4

5 **FIRST CAUSE OF ACTION**6 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,  
7 (CAL. CIV. CODE § 1750 et seq.)**

8  
9 44. Plaintiff incorporates by reference all the above allegations as if fully set  
10 forth herein.

11

12 45. Plaintiff and members of the Class are individuals who have purchased  
13 goods (i.e., the Headsets) for personal, family or household purposes. This cause of action  
14 is being asserted on behalf of a sub-class of all persons who purchased a Headset within  
15 three years of the filing of this action.

16

17 46. Defendants have represented that the Headsets have characteristics, uses,  
18 benefits, or qualities that they do not have, in violation of Civil Code § 1770(a)(5).  
19 Defendants also represented that the Headsets had a particular standard or quality that they  
20 do not have in violation of Civil Code § 1770(a)(7).

21

22 47. Plaintiff and the members of the Class have each been directly and  
23 proximately injured by the conduct of Defendants, and such injury includes payment for  
24 the unsafe Headsets.

25

26 48. In accordance with California Civil Code § 1780 (a), Plaintiff and the  
27 members of the Class seek only injunctive relief as to Defendants' violation of the CLRA.  
28 Pursuant to the provisions of Civil Code section 1782, on October 9, 2006, Plaintiff sent by

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1 certified letter to Plantronics a demand that it adequately correct, repair, replace or  
2 otherwise rectify the deceptive practices described in this Complaint for the entire Class,  
3 pursuant to Civil Code section 1770. In accordance with Civil Code § 1782 (a) & (d),  
4 Plaintiff will subsequently amend this Class Action Complaint without leave of Court to  
5 include a request for damages if Defendants fail to adequately correct, repair replace or  
6 otherwise rectify the deceptive practices, described in this Complaint and the certified  
7 letter, for the entire Class.

8

9 49. The Court should enjoin the Defendants from any further sales, marketing or  
10 advertisement of the Headsets which contain the misrepresentations detailed herein as to  
11 the standard, characteristics, uses, benefits, and/or qualities of the Headsets. The Court  
12 should enjoin Defendants from any further sales, marketing or advertisement of the  
13 Headsets without a warning as to the potential for noise induced hearing loss. The Court  
14 should further enjoin Defendants from any further sales of the Headsets until Defendant  
15 redesigns the Headsets in a manner which ensures that the volume emitted by the Headsets  
16 does not exceed 85 decibels or, in the alternative, which provides the consumer with the  
17 ability to determine the decibel level of the sound being emitted by the Headset.

18

19 50. Plaintiff engaged counsel to prosecute this action and is entitled to recover  
20 costs and reasonable attorney's fees according to proof at trial.

21

**SECOND CAUSE OF ACTION**

**VIOLATION OF UNFAIR COMPETITION LAW,  
(CAL. B & P CODE § 17200 et seq.)**

25

26 51. Plaintiff incorporate by reference all the above allegations as if fully set forth  
27 herein, except for paragraphs 44 through 50.

28

783382.1

16

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1       52. Plaintiff brings this cause of action on behalf of himself and on behalf of the  
2 Class. Plaintiff and the Class members have suffered injury in fact and lost money or  
3 property as a result of unfair competition by Defendants, as Plaintiff and the Class  
4 members paid the purchase price for an unsafe product which would not have been  
5 purchased if Defendants had not made misrepresentations and concealed or omitted  
6 material information as to the safety of the product and its limitations. Plaintiff and the  
7 Class members relied upon Defendants to disclose all pertinent safety information and the  
8 limitations on the safe usage of the product. Plaintiff and the Class members have further  
9 suffered injury in fact having been subjected to a nuisance, as defined by California Civil  
10 Code, section 3479, and as to which they were subjected by virtue of money innocently  
11 paid in purchasing a product injurious to health so as to interfere with the comfortable  
12 enjoyment of life.

13

14       53. The actions of Defendants, as complained herein, constitute unfair, deceptive  
15 and unlawful practices committed in violation of the Unfair Competition Act. Plaintiff is  
16 informed and believe that the conduct of Defendants violated the Unfair Competition Act  
17 because:

18

19       a. Defendants were aware, or upon reasonable investigation  
20                should have been aware, of the risks presented by the use of the  
21                Headsets;

22

23       b. Defendants purposefully and knowingly failed to adequately  
24                warn the consumer of the safety risk presented by use of the  
25                Headset;

26

27       c. Defendants advertised and marketed the Headsets with a  
28                representation that the Headsets could be used in excess of the

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1 number of hours which would be safe, even though Defendants  
2 were aware or should have been aware that such use could be  
3 unsafe;

4

5 d. Defendants failed to include in the safety information provided  
6 with the Headsets any mention of the potential for noise  
7 induced hearing loss, even though such a warning had been  
8 issued by competitors;

9

10 e. Defendants concealed, omitted and/or suppressed  
11 information as to the decibel levels emitted by the Headsets  
12 and the corresponding time limitations for use;

13

14 f. Defendants have unlawfully violated regulations limiting  
15 exposure to certain decibel levels over certain periods of time;

16

17 g. The Headsets, and Defendants' sale thereof to a considerable  
18 number of persons, constitutes a nuisance because the Headsets  
19 are injurious to health and/or interfere with the comfortable  
20 enjoyment of life, in violation of California Civil Code § 3479;

21

22 h. Defendants' conduct violates maxims of jurisprudence,  
23 including Civil Code §§ 3514, 3520, 3523.

24

25 54. Plaintiff is informed and believes that Defendants are aware, or should be  
26 aware, of the risk of hearing loss posed by the Headsets, but Defendants chose to market  
27 and sell the Headsets without adequate warning or modifications because such warnings or  
28 modifications could have had an adverse impact on the sale of the Headsets and the

1 revenue flowing to Defendants.

2  
3 55. Plaintiff and the Class members have suffered damages as a result of the  
4 conduct of Defendants, because Plaintiff and the Class members were misled into  
5 purchasing a product which was not safe and which was not what Defendants advertised  
6 the product to be.

7  
8 56. Plaintiff is informed and believes that all of the conduct alleged herein  
9 occurs and continues to occur in Defendants' business. The conduct of Defendants is part  
10 of a pattern or generalized course of conduct repeated on thousands of occasions daily.

11  
12 57. Plaintiff requests that this Court enter such orders or judgments as may be  
13 necessary to restore to any person in interest any money which may have been acquired by  
14 means of such unfair practices as provided in Bus. & Prof. Code § 17203, and for such  
15 other relief as set forth below.

16  
17 58. Plaintiff is informed and believes that the continuing sales of the Headsets to  
18 the unsuspecting public, without warnings and any mechanism by which the public may  
19 protect its hearing, exposes the consuming public in an ongoing danger of noise induced  
20 hearing loss, an irreparable and devastating loss. Because the noise induced hearing loss at  
21 issue herein is a silent condition (i.e., one is unaware that it is occurring as it evolves and  
22 until it is too late) that progressively occurs over time, everyday the consuming public uses  
23 the product, consumers continue down the path of noise induced hearing loss,  
24 incrementally but permanently affecting and/or jeopardizing one's long-term ability to  
25 hear. With every additional sale of the product, this path becomes increasingly congested.  
26 Plaintiff requests that this Court enter a temporary restraining order, a preliminary  
27 injunction, and a permanent injunction enjoining Defendants, and their agents, servants,  
28 employees and all persons acting under or in concert with them, to cease and desist from

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1 the following acts:

2

3 a. Selling, marketing or advertising the Headsets without a  
4 warning advising the consumer as to the product's potential for  
5 causing noise induced hearing loss;

6

7 b. Selling, marketing or advertising the Headsets without a  
8 mechanism by which the user can determine the decibel levels  
9 being emitted by the Headsets and thereby be made aware of  
10 the safe time limits for use of the Headsets at the higher  
11 volume settings;

12

13 c. Any other conduct which the Court determines warranted so as  
14 to prevent the commission of unfair competition by  
15 Defendants.

16

17 59. Plaintiff, on behalf of himself, the Class, and on behalf of the common or  
18 general interest, seeks an order of this Court awarding restitution, injunctive relief and all  
19 other relief allowed under § 17200, *et seq.*, plus interest, attorneys' fees and costs pursuant  
20 to, *inter alia*, C.C.P. § 1021.5. Plaintiff engaged counsel to prosecute this action and is  
21 entitled to recover costs and reasonable attorney's fees according to proof at trial. This  
22 case will result in the enforcement of an important right affecting the public interest, a  
23 significant benefit (pecuniary or nonpecuniary) will be conferred on a large class of  
24 persons (thousands if not tens of thousands or more), the necessity and financial burden of  
25 private enforcement are such as to make the award appropriate (the product costs less than  
26 \$200, which is minimal in comparison to the financial burden of litigating this important  
27 action, made necessary by virtue of Plantronics' refusal to protect the public's hearing); and  
28 such fees should not in the interest of justice be paid out of the recovery, if any (as the cost

1 of litigation by itself may exceed the monetary amounts paid by way of restitution).

2

3 60. Plaintiff meets the standing requirements of C.C.P. § 382 to bring this cause  
4 of action because, among other reasons, the question is one of a common or general  
5 interest, is a question of many persons and/or the parties are numerous and it is  
6 impracticable to bring them all before the Court. Further, Plaintiff has standing to bring  
7 this action as Plaintiff suffered injury in fact and monetary damages as a result of  
8 Defendants' conduct.

9

10 **THIRD CAUSE OF ACTION**

11 **UNTRUE AND MISLEADING ADVERTISING**  
12 (CAL. B & P CODE § 17500, et seq.)

13

14 61. Plaintiff incorporate by reference all the above allegations as if fully set forth  
15 herein, except for paragraphs 44 through 50.

16

17 62. Plaintiff brings this cause of action on behalf of himself, on behalf of the  
18 Class, and on behalf of the common or general interest. Plaintiff has suffered injury in fact  
19 and lost money or property as a result of Defendants' violations of Bus. & Prof. Code §  
20 17500. *et seq.*

21

22 63. Plaintiff is informed and believes that Defendants made representations  
23 disseminated to the public as to the uses of the Headsets in advertisements, product  
24 descriptions and other sales materials, while also concealing and/or omitting relevant  
25 information which would have qualified such affirmative representations. These  
26 representations, omissions and concealments were made to induce the public to purchase  
27 the Headsets. The representations were false. The information omitted and concealed  
28 should have been disseminated.

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1       64. Defendants were aware, or by the exercise of reasonable care should have  
2 been aware, that the representations were untrue or misleading. Defendants also were  
3 aware, or by the exercise of reasonable care should have been aware, that the concealments  
4 and omissions should have been disseminated in the advertising.

5

6       65. Plaintiff has been harmed. Plaintiff, on behalf of himself, on behalf of the  
7 Class, and on behalf of the common or general interest, seeks restitution, injunctive relief  
8 and all other relief allowable under § 17500, *et seq.*

9

10       66. Pursuant to Bus. & Prof. Code § 17535, Plaintiff and members of the Class  
11 are entitled to remedies as set forth below.

12

13       67. Plaintiff meets the standing requirements of C.C.P. § 382 to bring this cause  
14 of action because, among other reasons, the question is one of a common or general  
15 interest, is a question of many persons and/or the parties are numerous and it is  
16 impracticable to bring them all before the Court.

17

18       FOURTH CAUSE OF ACTION  
19       UNJUST ENRICHMENT

20

21       68. Plaintiff incorporates by reference all the above allegations as if fully set  
22 forth herein, except for paragraphs 44 through 50.

23

24       69. Defendants have benefited and been unjustly enriched by the above-alleged  
25 conduct. Defendants knowingly sold the Headsets to Plaintiff and members of the Class  
26 based upon misrepresentations as to uses which the product did not possess and  
27 concealment and omission of information which should have been disseminated.

28

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1 70. Defendants have knowledge of this benefit, and have voluntarily accepted  
2 and retained this benefit.

3  
4 71. The circumstances as described herein are such that it would be inequitable  
5 for Defendants to retain these ill-gotten benefits without paying the value thereof to  
6 Plaintiff and the Class members.

7  
8 72. Plaintiff and the Class are entitled to the amount of Defendants' ill-gotten  
9 gains, including interest, resulting from its unlawful, unjust and inequitable conduct as  
10 described above.

11  
12 **FIFTH CAUSE OF ACTION**

13 **BREACH OF EXPRESS WARRANTY**

14 (Cal. Civil Code § 1792.2 et seq.)

15  
16 73. Plaintiff incorporates by reference all the above allegations as if fully set  
17 forth herein, except for paragraphs 44 through 50.

18  
19 74. This claim is asserted on behalf of a sub-class of all persons whose express  
20 warranty is still in effect, i.e., Class members who purchased a headset within one year of  
21 the filing of this action.

22  
23 75. Defendants expressly warranted that their products were free of defects in  
24 materials and workmanship.

25  
26 76. Defendants' Headsets are defective in materials and/or workmanship.

27  
28 77. Plaintiff and the Class members have incurred damages as described herein

1 as a direct and proximate result of the defective Headsets and Defendants' violation of the  
2 provisions of the Cal. Civ. Code § 1791.2, *et seq.*, in that Plaintiff and the Class have paid  
3 the purchase price for a product which cannot be safely used for the purpose and length of  
4 time for which it was marketed and sold. Plaintiff, on behalf of himself and the Class  
5 members, has requested that Defendants correct or repair the defects and Defendants have  
6 refused. Plaintiff and the Class Members are entitled to refund of the purchase price of the  
7 Product, consequential and incidental damages, costs and expenses, including attorney's  
8 fees.

9

10 **SIXTH CAUSE OF ACTION**

11 **BREACH OF IMPLIED WARRANTY**

12 (Cal. Civil Code § 1790 *et seq.*)

13

14 78. Plaintiff incorporates by reference all the above allegations as if fully set  
15 forth herein, except for paragraphs 44 through 50.

16

17 79. This claim is asserted on behalf of a subclass of all purchasers of the  
18 Headsets who purchased it within one year of the filing of this Complaint.

19

20 80. The Headsets are consumer goods as defined in Cal. Civil Code § 1791.

21

22 81. The Headsets were sold with the implied warranty of merchantability in that  
23 they would pass without objection in the trade, are fit for the ordinary purpose for which  
24 they are used, are adequately contained, packaged, and labeled, and conform to the  
25 promises or affirmations of fact made on the container and label. The Headsets do not  
26 meet any of the foregoing criteria.

27

28 82. The Headsets were sold with the implied warranty of fitness in that

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1 Defendants had reason to know of the particular purpose for which the Headsets were  
2 required (i.e., to listen safely to communications, music and television via mobile phones)  
3 and Plaintiff and the Class members relied upon Defendants' skill and judgment to furnish  
4 suitable goods. The Headsets are not suitable for the purpose for which they are required,  
5 as Plaintiff and the Class members have no ability to determine the decibel levels being  
6 emitted from the devices and the corresponding safe time during which Plaintiff and the  
7 Class members may listen to the sound being emitted at such levels.

8  
9 83. The defect in the Headsets existed prior to the delivery of the Headsets to  
10 Plaintiff and the Class members.

11  
12 84. Plaintiff and the Class members have incurred damages as described herein  
13 as a direct and proximate result of the defective design of the Headsets and Defendants'  
14 breach of the implied warranties, in that Plaintiff and the Class have paid the purchase  
15 price for a product which cannot be safely used for the purpose and length of time for  
16 which it was marketed and sold. Plaintiff, on behalf of himself and the Class members,  
17 has requested that Defendants correct or repair the defects and Defendants have refused.  
18 Plaintiff and the Class Members are entitled to refund of the purchase price of the Product,  
19 consequential and incidental damages, costs and expenses, including attorney's fees.

20  
21 PRAYER FOR RELIEF  
22

23 WHEREFORE, Plaintiff, on behalf of himself and as representative of all other  
24 persons similarly situated, prays for judgment against the Defendants, as follows:

25  
26 a. An Order certifying the Class and any appropriate sub-class  
27 thereof, and appointing Plaintiff Bruce Schiller and his  
28 counsel to represent the Class;

- b. As to the Fourth through Sixth Causes of Action, for an award of general damages according to proof;
- c. As to the Fourth through Sixth Causes of Action, for an award of special damages according to proof;
- d. As to the Fourth through Sixth Causes of Action, for an award of punitive damages in an amount sufficient to deter and make an example of Defendants;
- e. As to the Second through Sixth Causes of action, for an award of restitution in an amount according to proof;
- f. As to all causes of action, for a temporary restraining order, a preliminary injunction and a permanent injunction enjoining Defendants, and their agents, servants, employees and all persons acting under or in concert with them, to cease and desist from the following acts:
  - (i) Selling, marketing or advertising the Headsets without a detailed warning advising the consumer as to the potential for noise induced hearing loss and the known risk of harm associated with exposure, even for brief intervals, to sound at high decibel levels;
  - (ii) Selling, marketing or advertising the Headsets without a mechanism by which the user can readily and easily determine the decibel levels being emitted by the

1 Headsets and thereby be made aware of the safe time  
2 limits (if any) for use of the Headsets at the higher  
3 volume settings;

4  
5 (iii) Any other conduct which the Court determines  
6 warranted so as to prevent the commission of unfair  
7 competition by Defendants.

8  
9 g. As to the Fourth through Sixth Causes of Action, for an order  
10 of disgorgement;

11 h. For costs incurred herein;

12 i. For prejudgment interest;

13 j. For reasonable attorneys' fees;

14 k. For all general, special, and equitable relief to which the  
15 Plaintiffs and the members of the Class are entitled by law.

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28  
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DATED: October 10, 2006

WASSERMAN, COMDEN &  
CASSELMAN, L.L.P.

By: 

MELISSA M. HARNETT  
Attorneys for Bruce Schiller and the Putative Class

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T-428 P.030/051 F-710

1  
2 **DEMAND FOR JURY TRIAL**  
3

4  
5  
6 Plaintiffs hereby demand a trial by jury.  
7

8  
9  
10 DATED: October 10, 2006  
11

12 **WASSERMAN, COMDEN &**  
13 **CASSELMAN, L.L.P.**

14 By:   
15

16 **MELISSA M. HARNETT**

17 **Attorneys for Michael Jones, Christopher Freeman,**  
18 **and the Putative Class**

19  
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28

CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

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OCT 10 2006

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14  
15 BRUCE SCHILLER, an individual and on  
Behalf of all Others Similarly Situated,  
16 Plaintiffs.

BC 360076

17 CASE NO. \_\_\_\_\_

18 PLAINTIFF BRUCE SCHILLER'S  
corporation, and DOES 1-50,  
19 Defendants.20  
21  
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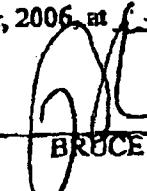
AFFIDAVIT

1 I, BRUCE SCHILLER, declare and affirm as follows:

2  
3  
4 1. I am an individual consumer who purchased a Plantronics Bluetooth Headset  
5 for my personal use in or about the Summer of 2006. At the time of the transaction, I was  
6 located in Los Angeles, California. At the time of transactions, I lived in the county of Los  
7 Angeles. I continue to live in the county of Los Angeles.

8  
9  
10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12  
13 Executed this 10 day of October, 2006 at Los Angeles, California.

14  
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